excludes all other remedies. BISHOP, WRITTEN LAW, § 249. The legislative intention was indeed to prevent fraudulent use of the mails, but only in a specified way; that is, by returning the mail *after* the Postmaster-General is satisfied of fraud. *New Orleans Nat'l Bank* v. *Merchant*, 18 Fed. 841. But even if the power may be implied, its exercise in the present case is excessive.

QUASI-CONTRACTS — NATURE AND SCOPE OF THE OBLIGATION — RECOVERY UNDER ILLEGAL CONTRACT. — The plaintiff agreed to construct a hotel according to plans which called for a roof of a pitch forbidden by statute. Before any work was done on the roof, the plaintiff disaffirmed the contract and sued for the value of the work and materials furnished for the lower part of the hotel. *Held*, that the plaintiff may recover. *Eastern Expanded Metal Co.* v. *Webb Granite and Construction Co.*, 81 N. E. 251 (Mass.). See NOTES, p. 137.

WILLS — CONSTRUCTION — RIGHTS OF RESIDUARY LEGATEE AND NEXT OF KIN. — A fund was left to C for life, with power of appointment by will. C died without exercising the power. *Held*, that the fund goes to the next of kin of the original testator, and not to his residuary legatee. *Walton* v. *Walton*, 67 Atl. 397 (N. J., Ct. of Ch.).

The law is opposed to any construction of a will that produces partial intestacy. *Kenaday* v. *Sinnott*, 179 U. S 606. The distinction formerly drawn that lapsed or void devises went to the heirs as intestate estate, though similarly unenforceable bequests of personalty fell into the residuum, has been abandoned. *Freme* v. *Clement*, 18 Ch. D. 499; *Molineaux* v. *Raynolds*, 55 N. J. Eq. 187. And the rule has always been practically universal that not only lapsed or void legacies, but also all interests in personal property not specifically disposed of by will, go to the residuary legatee. *In re Bagot*, [1893] 3 Ch. 348; *Riker* v. *Cornwell*, 113 N. Y. 115. In view of these authorities no satisfactory reason is seen to justify the construction of the present case that the reversionary interest of the testator, although subject to C's power of appointment, is not included in the residuary clause. Regarded solely as a question of the testator's intention, the construction of intestacy is possible. The case, therefore, disregards well-settled rules of construction to give effect to the court's opinion of what the testator intended to convey by the residuary clause.

BOOKS AND PERIODICALS.

I. LEADING LEGAL ARTICLES.

TERMINABLE DEDICATION BY LESSEE FOR YEARS; ESCHEAT AND THE DOCTRINE OF BONA VACANTIA — A recent article, suggested by a dictum in a late English case, discusses the validity of an attempted dedication by a lessee for years within the limits of his term. *Dedication of Land to Public Use by Lessees for Years*. Anon., 51 Sol. J. 509 (June 1, 1907). As the writer correctly states, no English case — and we might add, no American case — decides the question squarely, but the dictum, in accord with a statement in an earlier case,[1] is to the effect that the lessee cannot give his term to the public, because dedication must be perpetual. Accepting, without establishing this requisite, the writer, after analogizing escheat and reversion, on the theory that escheat is a proprietary right, insists that dedications by tenants in fee under dependent tenure and by lessees for years do not bind the overlords and reversioners, and that these attempted dedications are, therefore, terminable and invalid. Indeed, to satisfy his test of perpetual duration, — in fact, to make

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[1] Dawes *v.* Hawkins, 8 C. B. (N. S.) 847, 856.

dedication possible, — the writer is forced to regard the right of the sovereign to real property of an intestate without heirs, not as proprietary, but as governmental or prerogative, standing on the same footing as the sovereign's rights to *bona vacantia*.

With reference to the principal question, whether a lessee for years can dedicate for his term, there is, in general, agreement in the cases and text-books that ownership by the dedicator[2] and the unlimited duration[3] of the gift to the public are self-evident essentials of dedication. But the very readiness of the authorities to assume these requisites has resulted in impoverishing the theory of dedication. For, though it is clear that the lessee should not be able to bind the lessor by dedication without his actual or presumed assent,[4] it is not at all clear on principle why a lessee should not be able to dedicate within the limits of his term. Two cases leave the question open;[5] a dictum of a third suggests that there can be dedication for a limited period;[6] but none of these cases attempts to elaborate a principle. By analogy it might be urged that, as prescription for a term of years is not allowed by the law,[7] there should not be dedication for a term. But dedication is by gift, not by prescription. Moreover, the very doctrine of dedication was adopted and developed within the last two hundred years[8] because the theories of easements in aid of public or quasi-public rights were found inadequate.[9] Rules of prescription, therefore, should not be applied to dedication. Another objection to the lessee's limited dedication might possibly be the effect on the reversion. So long, however, as waste is not committed, the reversioner's rights do not seem to be prejudiced.[10] Finally, it is arguable that a terminable dedication would, at the expiration of the term, frequently embarrass the public who had enjoyed and relied on the continuance of the dedication. This argument is cogent, and rests, it is submitted, on what is the fundamental consideration in dedication — whether it is good public policy to accept the gift. Judged by this test, dedications should be permanent. Permanence, however, should mean simply the sort of duration which the tenant in fee has always been able to give to his dedication — not perpetuity in the strict sense employed in the article.

Even in that scholastic sense, it might be possible to contend that dedications by owners in fee under dependent tenure are perpetual, because they may bind the mesne lord or sovereign taking by escheat.[11] The writer of the article, however, is willing to assume that the overlord takes the escheated fee free from all dedications, so that, as said before, dedications fulfil the test of perpetuity only under a system of absolute ownership, which the writer adopts as the modern theory of real property in England. According to his theory the reason why the sovereign takes subject to the dedication is that his right to the real property of an intestate without heirs is prerogative, like rights to *bona vacantia*. The writer accepts this extreme position, denying the existence of escheat, because he fears that the analogy between escheat and reversion furnishes a basis for deducing the validity of a terminable dedication by a lessee for years from the dedication by an owner in fee terminable by the remote possibility of escheat, as indicated above. But it is to be observed that reversion and escheat, since the statutes of Edward I prohibiting subinfeudation,

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[2] Klug *v.* Jeffers, 88 N. Y. App. Div. 246; Bushnell *v.* Scott, 21 Wis. 451; note to State *v.* Trask, 27 Am. Dec. 559; Angell, Highways, 3 ed., § 134.

[3] San Francisco *v.* Canavan, 42 Cal. 541, 553; Ward *v.* Davis, 3 Sandf. (N. Y.) 502; Dawes *v.* Hawkins, *supra*.

[4] Harper *v.* Charlesworth, 4 B. & C. 574; Wood *v.* Veal, 5 B. & Ald. 454. *Cf.* Rex *v.* Barr, 4 Campb. 16.

[5] Vanatta *v.* Jones, 42 N. J. L. 561; Atty.-Gen. *v.* Biphosphated, etc., Co., L. R. 11 Ch. 327.

[6] Wood *v.* Veal, *supra*.

[7] Wheaton *v.* Maple & Co., [1893] 3 Ch. 48.

[8] See Gowen *v.* Phila. Exch. Co., 5 Watts & S. (Pa.) 141.

[9] See 16 HARV. L. REV. 335.

[10] *Cf.* Baxter *v.* Taylor, 4 B. & Ad. 72.

[11] See Casey's Lessee *v.* Inloes, 1 Gill. (Md.) 430, 507; 4 L. Quar. Rev. 318, 329.

are not analogous.[12] Equally certain it seems that, however desirable may be the substitution of allodial ownership for dependent tenure in England, it is to be realized by legislation, not to be adopted for a writer's purposes.[13] Until such legislative change, it is unwarrantable to reason from the sovereign's right to personalty as *bona vacantia* to realty in general. For in England the sovereign never took realty by prerogative except in the case of alienage and when entitled to derelict land as universal occupant.[14] In the United States, however, as many states have abolished tenure by legislation, they take realty of an intestate without heirs as *bona vacantia*, in the absence of escheat statutes.[15]

DE FACTO OFFICERS WITHOUT A DE JURE OFFICE. — When the charter of a long existing municipal corporation is declared unconstitutional so that the corporation can no longer be said to exist with any color of right as a *de facto* body, are the past acts of its officers valid as to third persons? Clearly, were all their acts void, there would be endless confusion. A recent article considers the practical importance and the authority on this question, and argues that such acts should be valid as to third persons — a contention which opposes the view of text-book writers.[1] *De Facto Office*, by K. Richard Wallach, 22 Pol. Sci. Quar. 460 (September, 1907).

There arises here more than the simple question, whether a man improperly chosen to a public office legally existing can ever do acts which are binding as to third parties, for there is here no office *de jure*. In considering the cases covering the situation, Mr. Wallach indicates that although there is a strong current in the law that the acts of men holding such offices are always void, yet that the exact point decided in all but one of the cases does not involve such a conclusion. He considers that the cases fall into two classes: those where *de facto* officers are wrongly holding an office, the legal existence of which is unquestioned, so that any dicta that an office *de jure* is essential are irrelevant; and those where, although no office *de jure* exists, yet it appears that the man acting could not be held a *de facto* officer in any case,[2] not having that color of authority which is necessary even in the case of a *de jure* office to make valid the acts of one holding office irregularly. It is not clear that in this second class the court's pronouncement is entirely *obiter*, for the fact that they take the trouble to find that no *de jure* office exists shows that their decision depends as well on that fact as on the lack of color of authority in the would-be officer's title — an authority which in several of Mr. Wallach's cases was seemingly presumed by the court,[3] although perhaps erroneously according to a strict analysis of the facts. It is possible, however, that some of these cases are distinguishable on a further ground. As Mr. Wallach points out, the principal reason of public policy for holding the acts of *de facto* officers valid as to third persons is the necessity of protecting the public in dealing with their government. It is submitted that in a criminal case the steady policy of the law to give a criminal every chance might very well override the ordinary rule of public policy, and that such a defendant should be allowed to set up the illegal existence of the office of those trying him,[4] though he could not question the authority of a *de facto* officer in a *de jure* office.[5] The difference between the

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[12] 2 Pollock & Maitland, Hist. Eng. Law, 22, 23.

[13] See 4 L. Quar. Rev. 318; 42 L. J. 440.

[14] See *Ex parte* Lord Gwydir, 4 Madd. 281; 4 L. Quar. Rev. 318.

[15] See Gray, Rule Perp., 2 ed., 170 n.

[1] Dillon, Mun. Corp., 4 ed., § 276; Mechem, Public Offices and Officers, § 324.

[2] Norton *v.* Shelby County, 118 U. S. 425; criticized in 11 HARV. L. REV. 266.

[3] *Ex parte* Babe Snyder, 64 Mo. 59; Decorah *v.* Bullis, 25 Ia. 12.

[4] *Ex parte* Babe Snyder, *supra*; State *v.* O'Brian, 68 Mo. 153; Petition of Hinkle, 31 Kan. 712; Matter of Quinn, 152 N. Y. 89. See also *Ex parte* Giambonini, 117 Cal. 573.

[5] State *v.* Carroll, 38 Conn. 449; *In re* Ah Lee, 5 Fed. 899; *Ex parte* Strang, 21 Oh. St. 610.